EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOSSEF KAHLON, et al.,	)	Civil Action
	)	No. 24-5383 (PKC)
Plaintiffs,	)	
	)	PREMOTION CONFERENCE
vs.	)	(via videoconference)
	)	
ERICA T. YITZHAK, et al.,	)	Brooklyn, New York
	)	Date: October 24, 2024
Defendants.	)	Time: 2:30 p.m.

TRANSCRIPT OF PREMOTION CONFERENCE
HELD VIA VIDEOCONFERENCE BEFORE
THE HONORABLE JUDGE PAMELA K. CHEN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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(Proceedings commenced at 2:30 p.m., in open court, via videoconference, with the Court and attorneys appearing via Zoom, to wit:)

THE COURT: Good afternoon, everyone.

Fida, I'm ready.

THE COURTROOM DEPUTY: Civil cause for pre-motion conference, Docket 24-CV-5383, *Kahlon, et al., v. Yitzhak, et al*.

Before asking the parties to state their appearance, I would like to state the following: Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court-issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court.

Would the parties please state their appearances for the record, starting with plaintiff.

MR. HAFT: Good afternoon.

David Haft, H-a-f-t, from Lewis Brisbois on behalf of the plaintiff.

THE COURT: Good afternoon.

MR. WEINSTEIN: Your Honor, this is Lloyd Weinstein, appearing on behalf of the defendants.

Good afternoon.

THE COURT: Good afternoon to you, Mr. Weinstein.

So we are here in connection with the premotion conference request of defendant Yitzhak, who wishes to file a motion to remand this matter back to state court, and there wants to seek to vacate a judgment that was previously issued in the state court action.

I wanted to talk to the parties because this is a situation where I can pretty readily forecast how I'm going to rule on this motion, and I think that I'd like to give the parties a benefit of my thoughts on it, to see if I might, in this instance, persuade defendant not to file that motion.

And I also want to clarify with you, Mr. Weinstein, it is just the individual defendant Ms. Yitzhak and not her law firms, which are also defendants, that is moving to remand? Not that this necessarily makes a difference, but I am just curious as to why it's down as just a potential motion from her.

MR. WEINSTEIN: I am not sure why it is listed like that. If I was unclear in the letter motion, then that error lies with me, but it is for all of the defendants.

THE COURT: All right. Now, my understanding -- yes. Go ahead. Did someone say something?

All right. I thought I heard someone try to interject.

Okay. So this is a motion that I'm -- that's going to be filed on behalf of all defendants. And the reason, Mr. Weinstein, I wanted to tell you that I don't think you should file this motion is because the issues seem pretty straightforward, although the procedural history is not, but my understanding is that this is a lawsuit brought by plaintiffs Kahlon, K-a-h-l-o-n, and Atlas Solar Holdings, seeking to -- well, this is a case that was brought basically to try to enforce the judgment reached in the state court action.

Now, Ms. Yitzhak has moved for bankruptcy or filed for bankruptcy, ostensibly, it seems, to protect and prevent the foreclosure sale or the seizure of her Manhattan apartment so that it can be used to satisfy the judgment in the state court action.

So there's obviously a very close nexus between the bankruptcy action and what is the relief that's being sought here, namely to collect on the judgment by forcing the sale of this apartment of Ms. Yitzhak. Yet you argue that I should remand this current federal case under the notion of equitable remand. And I just want to, I guess, take a step back and confirm that both parties seem to assume that I have jurisdiction over this matter as a removed matter, presumably based on its relation to a federal bankruptcy matter.

Am I correct in assuming that, Mr. Haft, first, and

then Mr. Weinstein.

MR. HAFT: Yes, Your Honor. We asserted this court has jurisdiction in our removal papers as well as our opposition letter as well. Not only is it related to the pending bankruptcy, the central issue, as we see it, is the interpretation of Federal Rule of Procedure 13. So we believe it is strictly a federal issue.

THE COURT: Okay. And, Mr. Weinstein, I didn't see, at least in the letter you filed, any contesting of jurisdiction. Is that accurate?

MR. WEINSTEIN: It's accurate that it is not in the letter, but it is not accurate in that the defendants respectfully submit that the Court does not have jurisdiction in connection with this.

THE COURT: You don't think I have related jurisdiction given the pending bankruptcy matter?

MR. WEINSTEIN: I do not believe that this is necessarily a court proceeding as the bankruptcy court might interpret that phrase, and I do believe that there are -- there's both a mandatory and permissive abstention either which would apply in this case. Given that courts can only -- rather, matters can only be removed to federal court when the federal court has original jurisdiction over the matter, if we look at the underlying matter itself, it is a lawsuit grounded in malpractice. It is a state court action of *Kahlon v.*

Yitzhak, which the federal courts would not have had original jurisdiction over.

THE COURT: I think again -- oh. Go ahead. Sorry.

MR. WEINSTEIN: I'm sorry, Your Honor.

I was to going say there's further argument about the application which is made many, many years after the commencement of the action, and, curiously, in this instance is made by the plaintiff, not the defendant. Most removals, Your Honor is aware, is done by defendant looking to create some sort of balance in the litigation. In this instance it is the plaintiff who is the movant, and it is the plaintiff who is the movant only after a motion was filed in state court that had already been considered by the bankruptcy judge.

So it seems to me it's a somewhat circular motion. And apologies for overspeaking, Your Honor.

If the matter is removed, if Your Honor consents to accept jurisdiction and then honors the request that this matter be transferred into the Southern District, and then somehow moved into the bankruptcy court, which is where it started, the bankruptcy judge himself said let the state court action decide. It seems to me that it is not a good use of Your Honor's valuable time.

THE COURT: Well, I will -- starting with your last point, first, I tend to agree with you that this may not be the most efficient or practical way to proceed since it's

possible, although I can't predict that for sure, that the bankruptcy court might decide when it finally has jurisdiction to lift the stay, as you suggest, and then let the state court decide the vacatur motion. But there's still procedural rules that apply here, and the first one is that I think I have to make an assessment of whether I have jurisdiction over this matter that has been removed to me in this court, and then there will be other issues about whether there's equitable remand required here, or at least that I should exercise my discretion in that regard, and then, obviously, the question about transfer of venue.

But I think as a legal matter, or, rather, I have to address the legal issues first, putting aside what may be the practical reality because that's not what really drives my analysis here or should be considered to drive my analysis.

And I have to disagree with you about your assessment of whether this is -- or whether or not there's mandatory abstention required here. Because this matter -- and it is interesting because I have addressed this precise issue in a wholly different context involving a legion of lawsuits brought against the Rockville Archdiocese based on alleged sexual assault crimes, going back many years. And I and a number of judges had to deal with the fact that those cases brought in state court be removed here to the federal court while there was a bankruptcy proceeding pending. And

there I found that I still had related-to jurisdiction, but that mandatory abstention was appropriate.

Here, I don't think it's the case because those were cases where the Diocese, who is the bankrupt party, the debtor, was not involved in any of the state court actions. Here you have almost a unity of parties because it is your clients who are involved in the state court action that they lost, and it is really because Ms. Yitzhak, or she declared bankruptcy, I should say, the heart of her bankruptcy action has to do with the attempted seizure and sale or forced sale of her apartment to satisfy the judgment.

So I think this is quite different. I think, actually, it's pretty clear that the judgment that's being sought and the related foreclosure action, or whatever the proper term is, I guess seizure and foreclosure action, forced sale, is at the core of the bankruptcy proceeding, and made so by your client. She's filing bankruptcy, she said herself, to prevent the plaintiffs from seizing it and using it to satisfy the judgment that plaintiffs won in the state court proceeding below.

So I disagree with you about your analysis, not that you raised it in your letters, you say, but assuming you would have to brief that as well, I can forecast for you that I would disagree with you on that point and find that I have related-to jurisdiction with respect to this matter, and that

I wouldn't have to stay, rather, that permissive abstention could apply, but I wouldn't exercise that, and I don't think mandatory abstention applies here or is warranted.

So, again, this is really just to give you an idea or predict for you how this is going to turn out because I really have in front of me everything I need, like many motions to dismiss and similar motions like this, for example, to remand, I know all the facts I need to know. This is obviously very different than something like a summary judgment motion.

So that is how I see the law applying, and especially because, and you make this argument in terms of the equitable remand part of the analysis, that the state court could decide this application of Rule 13, which is a federal rule, and that I should allow the state court to do that.

Now, as you both know and have set forth in your letters, equitable remand has a number of factors to consider. Certainly one of them has to do with what the issue is going to be and whether or not perhaps it is a uniquely state law predominant issue. That's not the case here. And, again, I can tell you that your argument about the application of Rule 13 in terms of whether the -- and I'm saying plaintiff in this case, whether the plaintiffs in this case were required to or was mandatory for them to bring what you call counterclaims, but are actually cross claims, against the defendants in this

case here in the state court proceeding. And the law is well established that cross claims aren't -- or aren't mandatory or subject to a mandatory requirement. They don't have to be brought at the time of the relevant action. Here it would be the initial state court action. And, in effect, it happens a lot that cross claims are brought out after a judgment is filed because that's when the right ripens, if you will, or the need for a remedy might ripen for the cross claiming.

So I'm curious about your argument about a counterclaim. Clearly, I don't know if it's a typo or if you have some theory under which Ms. Yitzhak would be a counterclaimant against -- or either way. But the plaintiffs here, Kahlon and Atlas Solar, would be counterclaimants against Ms. Yitzhak in a case where they were both all defendants. And that's the initial state court action.

MR. WEINSTEIN: I --

THE COURT: Sorry, the second state court action. My apologies.

MR. WEINSTEIN: A few -- I'm going to answer Your Honor's question, but just a few important points where I think there -- the Court needs to be aware of these facts.

The first is is that in the bankruptcy petition itself, Ms. Yitzhak's counsel already did make a motion to lift the stay, specifically as to this motion to vacate the judgment. And the Court at -- let's see. It's ECF 35. And

in the bankruptcy, it's actually quoted in my letter, the judge writes: The automatic stay is hereby modified to permit Kahlon to file any and all pleadings he deems necessary or appropriate to oppose debtor's renewal and re-argument motion, and the debtor's efforts seeking vacatur of the judgment.

So as an initial matter, this issue has been raised in the bankruptcy court. Now, arguably, the efforts to remand the matter from state court into federal court exceed the authority that was granted by the bankruptcy judge. The judge was very specific about what the parties could and could not do, and opposing the motion does not mean removing the matter to federal court.

But separate from that, the judge --

THE COURT: Let me ask you one question. The stay went into effect -- that was after this was removed here, correct?

MR. WEINSTEIN: No. The stay was in effect before this matter was removed.

THE COURT: Okay. So your argument is that the plaintiffs here acted contrary to the stay by removing it to federal court.

MR. WEINSTEIN: Correct.

THE COURT: All right.

MR. WEINSTEIN: It goes beyond the scope -- I'm sorry, Your Honor. It goes beyond the scope of authority that

the bankruptcy judge granted.

And then continuing on in the Court's order, the judge wrote: Other than permitting the debtor, which is Ms. Yitzhak, to prosecute the renewal and re-argument motion, and to seek to vacate the judgment, and to permit Kahlon to oppose such motion, and this is the important part, for the state court to rule on the renewal and re-argument motion, the automatic stay remains in effect.

So what had happened was Ms. Yitzhak's counsel in the bankruptcy matter moved the Court to lift the stay in a very limited fashion to allow the state court to review and hear and determine the underlying motion, and to allow Mr. Kahlon to oppose that motion in state court.

So two important takeaways from that interpretation. One is this removal exceeds the authority granted by Judge Bentley at that time, and, two, the bankruptcy court, which is Mr. Kahlon's ultimate destination, according to the letter in opposition, has already ruled that it wants the state court to hear this particular motion.

Now, continuing -- I'm sorry, Your Honor.

THE COURT: Let me pause here for one second because I want to hear from your opposing counsel on the notion that their motion to remove this case, which was in July of 2024, was actually contrary to the stay granted by the bankruptcy court. And that was, I think, at the beginning of July.

Actually, maybe earlier than that.

So what about that idea? Is the remand itself your -- sorry, removal motion itself invalid because you weren't supposed to do anything with respect to the state court proceeding?

MR. HAFT: Certainly, Your Honor.

I must respectfully disagree with Mr. Weinstein's whole analysis here. As a starting point, the fact that this judgment predated the filing of the bankruptcy, which on the date of filing created the automatic stay.

That's what was the subject of the motion for relief. Bankruptcy counsel filed to take action outside of the four corners of the bankruptcy court's jurisdiction under 362. There was no opposition filed. Merely the bankruptcy court's order provides that a debtor with the ability to pursue her own motion to vacate in state court. It in no way has a preclusionary effect as to my client pursuing his available remedies under whatever federal statutes may be afforded to him.

As Your Honor --

THE COURT: Let me -- I am going to ask you to back up, only because I need to catch up a little bit with you folks on the actual timing of things.

So Ms. Yitzhak filed her Chapter 13 petition on April 19, 2024, right?

MR. HAFT: Yes, Your Honor.

THE COURT: And then the stay went into effect when?

MR. HAFT: Contemporaneously on the filing.

THE COURT: All right. So it --

MR. HAFT: It stopped -- I'm sorry, Your Honor. It stopped the marshal sale that was scheduled for at or around that exact time on the co-op shares.

THE COURT: But you argue that it didn't stop your client as participant in the state court action from seeking to remove it.

MR. HAFT: Correct. That is absolutely correct, Your Honor.

THE COURT: Because, and this is maybe my lack of understanding, a stay could -- I mean, certainly in federal court it stops all actions.

Does the bankruptcy stay not affect the state court action in the same that it does any pending federal matters?

MR. HAFT: No. It actually does exactly the same way. So it stayed my client's enforcement of its judgment and the corresponding marshal sale. Ms. Yitzhak moved for stay relief to try to vacate the state court judgment outside of bankruptcy, but in no way does that affect my client's rights to enforce this judgment, other than the fact that it is stayed by 362, and under the bankruptcy code. Nothing about that bankruptcy court order has any impact whatsoever on my

client's ability to seek removal under the appropriate lines of jurisdiction, which we've done here. There's been nothing even argued in opposition. The fact is, a bankruptcy order under Mr. Weinstein's analysis would have the global effect of precluding any type of removal going forward, and that would be an absurd result under these circumstances, or under any circumstances, for that matter.

THE COURT: Mr. Weinstein, what are you relying on to argue that the stay precluded plaintiff in this case from removing?

MR. WEINSTEIN: The rule regarding the automatic stay at Section 362 stays everything. It is not stays these kinds of cases, but not those kinds of cases. It doesn't stay these kinds of motions or other kinds. It stays everything. And the only way to get outside of that stay is to seek the permission of the bankruptcy court. And that is what Ms. Yitzhak did. She sought the Court's permission, and although counsel is indicating that there was no opposition that was filed, I am going to respectfully disagree, his counterpart did appear in bankruptcy court and made an oral argument in opposition to the stay, and argued for certain rights, in fact, wanted to cross move for sanctions, and argued in front of Judge Bentley that they were entitled to that right, and the judge granted it and said, you can file for sanctions. That's not part of my citation here because it

is not relevant to what we're talking about. But then the judge was very clear in what else was allowed.

And in the very short list of items that were allowed, meaning lifting the stay for the purposes of the state court hearing the motion, and allowing Mr. Kahlon to file opposition and his cross motion, everything else is still stayed, pursuant to statute.

So I'm going to respectfully disagree with counsel. I believe that nothing needs to be proven by Ms. Yitzhak to demonstrate that the stay remains in effect. The stay is only lifted as to those items that I just identified.

THE COURT: We have a fundamental disagreement here about the provision and what it stays and what it doesn't.

It's obviously clear, and everything agrees, it stays a state court action from going forward, in and of itself. For example, the plaintiff was precluded from seeking to enforce the action. But beyond that, it's not clear -- I mean, obviously, you folks disagree about whether or not it precludes a party from seeking to remove the matter to federal court.

Do you have a case cite, Mr. Weinstein, or something more? And I am actually trying to pull up the statute itself. Give me one second.

(Short pause.)

MR. WEINSTEIN: Judge, in this moment, if I can just

advise the Court, counsel had indicated that there was no opposition to the motion, and I indicated that there was. I just want to point out opposition was filed on June 10, 2024, and the certificate of service is actually from Mr. Haft. So I am not quite sure why counsel indicated that there was no opposition. There certainly was.

But having said that, the Court's order, I am just looking for our copy of it in front of me, I would say is the document itself, that -- I now have it in front of me -- that spells out the entirety of what Mr. Kahlon is permitted to do. And that was filed -- it is Document No. 28 in the bankruptcy.

Oh, sorry, Your Honor, I'm misspeaking. It is pages 4 and 5 of Document 28. Let me see if I can get the actual document itself.

MR. HAFT: Your Honor, if I could just chime in real quick, if you'll permit me.

What I think I'm hearing from Mr. Weinstein, and maybe this is your interpretation as well, it seems to be that he is suggesting that this is somehow a violation of the automatic stay --

THE COURT: Right.

MR. HAFT: -- which would be a bankruptcy court issue. That wouldn't have any effect on this Court's analysis as to jurisdiction whatsoever.

THE COURT: Well, I mean, yeah, it is an interesting

question, though. I think it's the cart before the horse. His argument seems to me, although it's slightly, I think, different than what he argued in the letter, is that your client, or your removal in the first place, is invalid or shouldn't have even been done, putting aside whether I had jurisdiction or not, because your clients were allowed to do anything relating to the state court matter, and that would include trying to remove it here, he argues, while the stay was in effect, which we all agree preceded the removal.

So I am looking at the statute now, 362, and you're right that it's bankruptcy law we're talking about here. But the automatic stay does have an effect -- certainly it has an effect on matters before me, right, that I have jurisdiction over, and the question is does it also preclude bringing matters to place them before me, assuming I have jurisdiction for the moment or could have jurisdiction over them.

And so the first provision, which is 362(a)(1), basically says that these are the things that are stayed, and one is that the commencements or continuation, and I am reading ahead -- well, including the issuance or employment of process of a judicial administrative or other action, or proceeding against the debtor, and that would obviously be Ms. Yitzhak, that was or could have been commenced before the commencement of the case.

All right. So this doesn't relate, I don't think,

because this is not something that could have been commenced before the state court case -- I'm sorry, before -- let's see. The case under this title. So before the bankruptcy matter. And I see (2) is enforcement against the debtor. So that obviously is why you couldn't enforce the state court judgment.

But I think one is where it might be, if anywhere. Here we go. Number 8. The commencement or continuation of a proceeding. No, that's Tax Court.

All right. So I guess, again, Mr. Weinstein, I am trying to figure out which part of 362(a) do you say would have precluded or did preclude plaintiff from even filing a motion to remove this, or, obviously, noticing the removal of the state court case.

MR. WEINSTEIN: Your Honor, I believe it is directly in (a)(1), where it talks about including the issuance or employment of process. The removal of the matter is, in fact, process. It is not quite a motion to remove. You have the automatic ability to do it, assuming that jurisdiction has been met. It is not a motion, it is legal process. And 362(a)(1) directly says you cannot do that. And more to that point, it is not listed as amongst the liberties that Mr. Kahlon is permitted to engage in that the bankruptcy judge permitted.

THE COURT: Yeah. As I said before, this is not, I

think, what I read in your letter. So it's slightly different than what I thought you were focusing on, which is this notion of equitable remand. Because it appeared to me in your letter you were both assuming I had jurisdiction, and that really the question is applying the standard for equitable remand.

I guess, quite honestly, I'd like to see some case law that supports your position that somehow 362(a)(1), in effect, deprives me of jurisdiction because plaintiffs weren't permitted to remove this action in the first place or seek to remove it.

MR. HAFT: Your Honor, if I may, I would agree with your assessment here. It sounds like a completely different argument. But in any regard, if that's the position that the defendant is taking here, I don't believe Your Honor's the appropriate venue to make that determination. It'd be a stay violation issue that should be before the bankruptcy court. But if we're traveling under the papers here, then certainly our argument is the same that we've made previously this afternoon, is that the court has jurisdiction. This is an equitable remand analysis and nothing further.

THE COURT: Yeah. Right. It does seem to me that that's correct. I mean, I guess also Mr. Weinstein, although not indicated in his letter, is disputing that I have related-to jurisdiction in the first place. But as I said before, it's pretty clear to me that I do, and I also don't

think mandatory abstention applies here. And now Mr. Weinstein is adding a different argument, which is this one we're debating now.

Now, I'm also trying to -- I don't actually think the fact that the bankruptcy court lifted the stay for the limited purpose of allowing Ms. Yitzhak and the other defendant to move to vacate this court judgment, that that affects my analysis. Because as I said before, that is a practical consideration, and I recognize it, that this may end up at the bankruptcy court, and the bankruptcy court may tell Ms. Yitzhak to go back to state court and attempt to vacate the judgment against her, because that really is at the core of her bankruptcy claim and will affect the rights and liabilities in the bankruptcy proceeding. That's very clear to me, which is why I think I have related-to jurisdiction.

But the practical consideration is still not relevant to the test that I apply in determining equitable remand. And everyone knows what those seven factors are.

MR. WEINSTEIN: Judge, may I still be heard? There are a few other issues I wanted to --

THE COURT: Yes. Go ahead.

MR. WEINSTEIN: Thank you.

So one of the issues or one of the, I guess, comments that was made during the course of the day is that this was done to stay enforcement, that the motion itself that

was filed was done to stay enforcement. And, in fact, that's not accurate. And although there was an effort at the state court level to stop the sale of Ms. Yitzhak's property, none of that has anything necessarily to do with when she filed for bankruptcy, and the protections that are automatically afforded to her. So if --

THE COURT: Wait. Why is that relevant, though? I'm not sure I understand. In other words, you're saying it wasn't the fact that the plaintiffs were trying to get her property to satisfy the judgment that caused her to file bankruptcy. But is that relevant?

MR. WEINSTEIN: The answer is it is relevant to the extent that it provides a little bit of background information and is part of the timeline. So just following the timeline, you have the motion to vacate the judgment, then you have Mr. Kahlon's accelerated efforts to enforce the judgment. While the motion to vacate is pending, and while those accelerated efforts are going on, Ms. Yitzhak opposes and then ultimately must file for bankruptcy protection in order to stop the sale of her residence.

Now, the argument, or, rather, an argument was made before Judge Bentley by counsel for Mr. Kahlon where they specifically argued saying we want this additional right. For example, we want the right to file a counterclaim seeking sanctions.

So they had the opportunity at that moment to say -- because, Judge, the motion to vacate was pending, they had the opportunity at that moment to say to the bankruptcy judge, you should be hearing this motion. But they did not. And, in fact, it was Ms. Yitzhak who said to the bankruptcy judge, you should not be hearing this motion, and the bankruptcy judge agreed. And it's specifically in his order saying that the motion should be determined by the state court judge.

So going back to my initial comment, if we do not remand, and the matter stays in federal court, and Mr. Kahlon then attempts to somehow transfer to the Southern District and try to get into the bankruptcy court, the bankruptcy judge has already ruled that the motion to vacate should be heard at the state court level.

So if we go through that whole process that counsel's suggesting by this application, all we really are doing is going in a big circle and wasting a lot of federal judge resources.

The bankruptcy judge -- bankruptcy rules under 362 are very clear. Everything has to stop. I mean, the whole function of bankruptcy protection is to halt any kind of process that is going on against a debtor so that they can seek the protection of the Court. And if you want to go outside of that, whatever -- for whatever reason, you need the bankruptcy judge's decision. And that is what happened. And

now this --

THE COURT: Let me -- I'm so sorry.

MR. WEINSTEIN: Of course.

THE COURT: Why do you need to file this motion, though, if, in fact, as you say, the bankruptcy court lifted the stay to allow Ms. Yitzhak to file her motion to vacate? Can't she still do that?

MR. WEINSTEIN: The motion to file -- sorry.

The motion to vacate the judgment was filed well in advance --

THE COURT: Sorry. I meant why can't the state court judge go ahead and decide that, if, as you argue, the stay has been lifted as to the state court proceeding?

MR. WEINSTEIN: Oh, she can. And, in fact, Judge Gianelli was preparing to decide it, and that is when Mr. Kahlon removed the matter to federal court.

THE COURT: So who did you say the judge is in the state court matter?

MR. WEINSTEIN: It's Judge Sharon Gianelli.

THE COURT: Okay. So you're saying Judge Gianelli -- has she said, oh, I can't rule on this because the case has been taken out of state court?

MR. WEINSTEIN: No, she has not said that, but counsel for Mr. Kahlon has put Judge Gianelli on notice by virtue of the removal, the state court has notice of the

removal, and Judge Gianelli is obviously aware of the import of that.

THE COURT: Well, assume for the moment I am not going to agree with your interpretation of the stay and the scope of it, just for the sake of argument. Let's assume I disagree with your reading of 362(a)(1) and say, in fact, plaintiff could still seek to remove this because it is not actually, I guess, violating the stay because the stay would apply here in front of me. In other words, other than removal, nothing more could happen in the case, right? While the bankruptcy is proceeding. It just puts it in a different venue.

And assume further that I'm not agreeing with you about my jurisdiction. That, in fact, I find there's related-to jurisdiction here, and there's no mandatory abstention required.

Your assessment of the equitable remand facts is what I would like to focus on for a moment.

Is your argument that the state court has already been given permission to consider the vacating motion by virtue of the bankruptcy court partially lifting the stay, does that relate to any of the seven factors, and I guess specifically I imagine you are going to argue it relates to number one, which is the efficient administration of the bankruptcy estate.

Are you making an argument that somehow if I retained jurisdiction of this, it will somehow adversely affect the efficient administration of the bankruptcy estate? Because it seems to me, if I retain jurisdiction, and then I transfer venue to Southern District, and then Southern District quickly thereafter sends it to the bankruptcy court, that is a fairly efficient way to deal with the bankruptcy matter and the bankruptcy estate in its administration.

Would you agree or disagree with that?

MR. WEINSTEIN: I would disagree with that, Your Honor, because if we follow that process, then all we are doing is giving back to the bankruptcy judge the very question that was already answered. The question was, which court should hear the motion, and the bankruptcy court very clearly said the state court.

So if we go through Your Honor's analysis and retain jurisdiction and then transfer the Southern District and then transfer to the bankruptcy court, we are going to be asking the same question that was already asked in that court.

THE COURT: But if the basis of your motion in state court is going to be the application and interpretation of a federal rule, why shouldn't that be done in federal court, in bankruptcy court, in fact?

MR. WEINSTEIN: Understood, Your Honor.

What we are talking about is New York state court's

interpretation of Federal Rule 13. Not necessarily how the federal courts --

THE COURT: I don't mean to be dismissive, but is that really relevant?

MR. WEINSTEIN: It is, Your Honor, because you started off earlier in this conference discussing that you believed that Rule 13 might not necessarily apply because it's a cross claim versus a counterclaim. An argument at the state court level can and has been made, that that's a difference without much of a distinction, and that the concept of res judicata should apply at the state court level, and that concept is supported in the underlying motion to vacate.

THE COURT: But you're saying the state court is essentially reading the rules in a way that's contrary to what they actually say? I mean, Federal Rule 13 really -- hang on -- doesn't support that interpretation, nor does federal law, and somehow you are saying state courts are ignoring federal precedent to say, no, you have to bring counter cross claims at the same time that a case is ongoing, even though, obviously, cross claims, I mean, you know, obviously could only arise or at least the need to bring a case might only arise after a party loses or a defendant loses.

MR. WEINSTEIN: I am not suggesting, Your Honor, that the state courts are ignoring the federal rules.

What I am suggesting is, is that the interpretation

of Rule 13, and I'm just trying to get a copy of my memo in front of me so I can give you a citation --

THE COURT: Hang on one second. I am looking at Rule 13 itself. So the first section is entitled compulsory counterclaim. And let's get back to how you call this a counterclaim in the first place. I mean, I think, fundamentally, your argument is flawed. Because how is it a counterclaim? And are you going to tell me New York interprets the word "counterclaim" versus "cross claim" with a different interpretation?

MR. WEINSTEIN: Well, if you'll bear with me just a moment.

I am looking right now at a New York state First Department case -- and apologies, Your Honor. Just pulling up my brief, which was filed in March of this year, so.

THE COURT: But can I ask you one question before you pull that up?

MR. WEINSTEIN: Of course.

THE COURT: Have you always been characterizing this as a counterclaim, that whatever could have been brought by plaintiffs in this case against Ms. Yitzhak when they were all codefendants is a counterclaim? Has that always been your argument?

MR. WEINSTEIN: The argument has been -- with a citation to the word claim, not counterclaim or cross claim.

And I have a particular citation from the state court which references an unpleaded claim or defense.

So the state court, at least in this particular instance, is not being as specific as counterclaim or a cross claim.

THE COURT: Okay. But then you're not applying Federal Rule 13.

MR. WEINSTEIN: It's not that Federal Rule 13 is not being applied, but rather it's import is being, at least from the federal court rules perspective, expanded to include claims, and not just counterclaims.

THE COURT: But the case you're citing, it doesn't say under Federal Rule 13 there's a general notion that claims ought to be brought, whether cross claims or counterclaims, at the earliest possible moment, therefore, we will bar future lawsuits or follow-on lawsuits that fail to do so, or something like that. Because there's no -- it doesn't seem to me that whatever state court rule you're citing or decision you're citing is seeking to interpret Federal Rule 13 at all. Tell me what the cite is. I'm curious.

MR. WEINSTEIN: Sure. And in these moments I am able to pull up a couple state court citations as well as federal court citation. So just starting with the state court citation, which is a matter called *Gargiulo v. Oppenheim*. It's 63 N.Y.2d 843.

THE COURT: How do you spell Gargiulo?

MR. WEINSTEIN: G-a-r-g-i-u-l-o.

THE COURT: Okay.

MR. WEINSTEIN: And it reads: The claimed preclusion doctrine bars subsequent litigation where -- and here it gives instances -- 1, the prior action resulted in an adjudication on the merits. We have that.

Number 2. The prior action involved the plaintiff or those in privity with her. We have that as well.

And, number 3, the claims asserted in the later litigation were or could have been raised in the prior action.

And that citation also is in *Monahan v. NYC Department of Corrections*, that's 214 F.3d 275. It is a Second Circuit 2000 case.

So I believe that the argument in state court can be made that the interpretation of Rule 13 is not limited just to counterclaims -- not just to counterclaims, but to claims that could have been previously asserted.

And the brief goes on to cite several other cases where matters that had been reduced to judgment were considered and then vacated. There's New York state court cases as well as federal cases with this argument.

So when Your Honor indicated your initial perception of the motion, defendants are going to respectfully disagree in this instance, citing, for example, *Paramount Pictures*

Corp. v. Allianz Risk Transfer. It's 216 NY Slip Op 05618.

It says: Based on the foregoing, we conclude that the later assertion in a state court action of a contention that constituted a compulsory counterclaim in a prior federal action between the same parties is barred under the doctrine of res judicata.

THE COURT: But, again, stop for a second, though. That's a counterclaim. So, yes, that's consistent with what Rule 13 said. You are talking about a cross claim. Can we at least agree on that?

MR. WEINSTEIN: Correct, Your Honor. And doing this a little bit on the fly, not anticipating that I was going to be arguing this underlying motion, I am going through the brief and trying to find the citations that are specific to this, that the take away is that New York courts look at it as claims that could have been made that were not raised. And that would include counterclaim or cross claim. Even though Federal Rule 13 says counterclaim.

THE COURT: Okay. The only thing, Mr. Weinstein, you say you are not prepared to argue this. But your letter says specifically you are going to make an argument in terms of vacating this state court judgment, or maybe have already made that argument, since the motion has been filed by you or another lawyer, that because of Federal Rule of Civil Procedure 13, the cross claims should have been made at the

time of the underlying state court action. I say underlying, but the original state court action.

But now you're saying, really, there's some state court, largely what seems to be state court law concept that any claims that relate to the subject matter between the same parties or involving the same parties should have been brought -- and let me back up. Involving the same parties, regardless of which side they're on. So it seems like it could be cross claims or counterclaims, should have been brought at the same time as the original action, and, therefore, they are barred in some later action. That's essentially what you're saying. And the effect of that would be to say, from the outset, that the 2016 action that Mr. Kahlon and Atlas brought against Ms. Yitzhak for malpractice should have been brought at the time that the, what is it, 2012 lawsuit was brought.

Is that right?

MR. WEINSTEIN: No. And if I -- I do want to respond, but I just sort of want to sort of make a correction.

I'm certainly prepared today, Your Honor, to have this discussion. What I did not have in front me was the brief and the specific citations. So, I'm sorry, I spoke confusingly.

The answer to Your Honor's question is that because Ms. Yitzhak and Mr. Kahlon were codefendants simultaneously in

the underlying action, Mr. Kahlon could have brought those claims against Ms. Yitzhak. And at least from the cases that are cited in my underlying brief and the motion to vacate, courts -- New York state courts have interpreted that to mean claims that could have been brought are precluded.

THE COURT: Right. But as cross claims. I mean, what troubles me is that what you wrote in your letter is you keep calling them counterclaims, and we agree that they are not. And you also say this principle then is supported by Federal Rule of Civil Procedure 13, which I would agree with you, if they were counterclaims, no question. They are mandatory in terms of being brought or compulsory in terms of being brought at the time of the underlying claims. Or the related claims.

But now you're saying you're relying really on some other line of cases that suggest that any kind of claims, cross claims or counterclaims that relate to the transactions at issue, must be brought at the same time. And, I mean, again, I am just reading your letter. This is not a Federal Rule 13 issue, as far as I can tell.

Now, the only reason I am pressing you on this is it does effect this equitable remand argument that you are going to make.

But, again, going back, I guess, a few minutes ago, it seems to me now the motion you're proposing isn't quite the

same one that you suggested in your letter that you intend to argue. It seems to me in the first instance that I don't have jurisdiction, either because the stay precluded plaintiffs from even removing this action to federal court or, second, because I don't have related-to jurisdiction and/or mandatory abstention applies. And then if we get through all that, you would argue equitable remand requires this matter to be remanded because of this notion that all claims, whether cross claims or counterclaims, that relate to the original action or arise out of the same transactions, should be or must be brought at the same time.

Have I sort of summarized what it is you now -- or maybe have always wanted to argue in your motion?

MR. WEINSTEIN: Yes, Your Honor.

THE COURT: All right. Mr. Haft, did you want to respond? Because I feel, unfortunately, I need to see a little bit more about these issues in order to make a sensible decision, so there might have to be some briefing, even though I think it is not a good use of anybody's time. Because I think the goal for both sides is to simply get to see if the judgment can be enforced, even if it is in the context of the bankruptcy action. So either in state court or in the bankruptcy action.

The one other question I want to ask you, Mr. Weinstein, before hearing from Mr. Haft, is this argument

you are making now about the claims -- I am going to use my own -- or I'm going to paraphrase it by saying all the related claims, whether cross claims or counterclaims, should have been brought at the time of the original lawsuit when the plaintiffs and the defendants in this case were on the same side, is that an argument you made or whoever was representing Ms. Yitzhak and her law firms made when the original 2016 litigation was brought? Is it --

MR. HAFT: No.

THE COURT: -- after the --

MR. HAFT: No.

THE COURT: Okay.

MR. WEINSTEIN: It was not previously made.

THE COURT: So haven't you waived it?

MR. WEINSTEIN: I don't believe that it's been waived. I don't believe that the claim or the preclusionary effect of considering a claim that should have been brought is waived if not raised in the federal court. That's exactly why there are so many state court cases that particularly tackle this issue.

THE COURT: No, no. I think you misunderstood my question. I meant, wasn't this issue you are now making about cross -- I'm sorry, cross claims, I am going to call them that because that's what they are, that they should have been brought before the judgment was issued, were they ever

raised -- I mean, I guess you wouldn't know about them. That's right. I guess the argument wouldn't arise until after the judgment was issued and after this lawsuit was filed.

MR. WEINSTEIN: Correct, Your Honor.

THE COURT: Yeah. That's fair enough. Okay. Disregard that.

All right. So, Mr. Haft, do you have any response, now that I think we both have a slightly fuller understanding of all the arguments Mr. Weinstein intends to make in defendant's motion.

MR. HAFT: I do, Your Honor. I don't think there's any applicable legal authority to support the position, and I think in our papers we make pretty compelling arguments with respect to Rule 13(g), which provides for the bringing of cross claims, in addition to the fact that the cross claim doesn't come into fruition, as the cause of action itself doesn't exist until after the initial judgment.

So even presupposing that a cross claim could have been brought at that time, it doesn't change the fact that a cross claim is never compulsory as a matter of law under federal law. And we cite to the *Priority Records v. Bridgeport Music*, 907 F. Supp. 725, a Southern District New York case from 1995, which references back to exactly what I am saying here.

We think it's on all fours. We don't really think

there's much of an argument here. The term "cross claim," as Your Honor's pointed out throughout this afternoon hearing, is a distinct concept from a counterclaim. Which we would agree, if this was a counterclaim and they are on opposite sides of the "V" in the underlying litigation, Mr. Weinstein's argument would probably be spot on. But that is not the case here.

THE COURT: Yeah.

Let me go back for a minute, too, because this procedural history is so convoluted. I must confess, I think I either misunderstood and/or misstated the history in posing the question I did just a moment ago to you, Mr. Weinstein. Because when I asked you why didn't you raise this argument before, there actually was -- your argument is that the malpractice claim should have been brought earlier by Kahlon and Atlas, which would have been a cross claim against Ms. Yitzhak. But the history is that Ms. Yitzhak represented plaintiffs in Kahlon and Atlas in a 2012 state court action against two third parties that aren't relevant here.

The plaintiffs claim that Ms. Yitzhak's representation was woefully deficient, and that's what they're alleging in the state court case which was filed in 2016.

So I guess what I'm trying to understand, and I apologize, I am getting a little lost in this procedural history. So when was it that the plaintiffs, Kahlon and Atlas, should have raised the malpractice claim?

MR. WEINSTEIN: Once again, Your Honor, you are asking me a question that I do want to answer, but I do want to say one thing first.

THE COURT: Yes, okay.

MR. WEINSTEIN: When you said that you got lost in the procedure here, that actually is one of the reasons supporting the remand. Judge Gianelli has been with this case for quite some time, is familiar with the parties, the underlying motion practice. The very detailed and convoluted history of the case.

So from the perspective of looking at it as conserving judicial resources and the obvious learning curve that's required in order to understand this case, I would submit that that supports the remand.

Now, going back to Your Honor's question, the answer is when Mr. Kahlon should have asserted this is as a cross claim in the course of the litigation in which he and Ms. Yitzhak were codefendants. That's when it had been asserted, but it was not.

THE COURT: But hang on a second. That would be in the May 2013 lawsuit filed by Lambe, L-a-m-b-e, and Sunray, S-u-n-r-a-y, all one word, so Lambe and Sunray, when they filed that lawsuit here in the Eastern District of New York, a federal case, against Kahlon, Atlas, and Yitzhak and her law firms, that's when you say the cross claims should have been

raised by Kahlon and Atlas against Yitzhak and her law firms. So that is a Federal Rule 13 issue.

You can't rely on state court interpretation. Because that's when you're saying, and that's what you wrote in the letter, now that I am unravelling this again, that's why I think you relied on Federal Rule 13, that's what you are going to argue to the state court, I think, that somehow the follow-on lawsuit brought in state court by Kahlon and Atlas to sue for malpractice should have been brought contemporaneously in the Lambe Sunray lawsuit, let's call it that, in 2013.

So this is necessarily a Federal Rule 13 issue. You cannot rely on state court language about claims in general, whether cross claims or counterclaims. You cannot escape the fact what you have to invoke is a federal rule.

So now that I am sort of refocusing on the exact procedural history and when you say that this claim should have been raised, which is a cross claim, I don't see how you escape the analysis being a federal analysis of a federal rule of procedure. And, again, this is what I think -- why I think you wrote the letter as you did. I think you were correct.

MR. WEINSTEIN: The underlying action was brought in state court, and the judgment is a state court judgment that was issued against Ms. Yitzhak based on the claims of Mr. Kahlon.

THE COURT: Right.

MR. WEINSTEIN: That is --

THE COURT: You are trying to argue vacating based on a federal rule, i.e., they should have brought in the federal case under Federal Rule 13. That's what you want the state court to interpret, and I think that's why it cuts the other way. It is more appropriate and proper for this court to decide what should have been raised in a federal case in this court. In this very district. That's why I think this notion that somehow the state court should interpret what the federal rule requires, especially as applied in a state court -- sorry, in a federal action in this court is incorrect. That's improper. I mean, not improper, but I don't think that that doesn't weigh towards equitable remand, it weighs away from it, if anything. Because, remember, one of the factors is the extent to which issues of state law predominate, and they don't predominate here. It is strictly a question, your whole argument about vacating, depends on the interpretation of a federal rule that would apply in federal court. Not in state court.

MR. WEINSTEIN: Understood. I understand what Your Honor is saying. When the action was originally brought in state court, and the enforcement was going on, and Ms. Yitzhak filed her motion to vacate, then had to file for bankruptcy, the underlying claims by Mr. Kahlon against

Ms. Yitzhak was a state court matter. It was only after Ms. Yitzhak filed for bankruptcy, after the motion to lift the stay that was filed by her, and after the judge gave a very, very limited authority to take action concerning this claim, that Mr. Kahlon then removed the matter to federal court and is now arguing it's a federal court enforcement matter, but it's not. It was a state court matter, and the reason why the motion to vacate the judgment is, it's a state court judgment.

So I do --

THE COURT: No, no, no, no. None of what you said is correct to me.

I don't think he's trying to convert the nature of this -- or, rather, let me say this: I don't think the core analytical issue, being one of federal law and interpreting federal procedural law, is affected by Mr. Haft removing this matter to federal court. It started off that way, and you are making it that way in the state court. Because where the claimed cross claim should have been brought, you argue, is in the federal lawsuit by Sunray and the other -- Lambe.

You made -- you're making this argument -- and this is actually going back to my other question. You are making this argument to try to vacate a state court order for malpractice. But, again, at core, you cannot escape the fact that this would require the state court in addressing your motion to decide an issue of federal procedural law.

Should the plaintiffs have -- let me refer to them by name. Should Kahlon and the company cross claim at that time, was it mandatory for them to cross claim in the federal lawsuit by Lambe and Sunray when it was ongoing. That's the basis of your argument in the state court. And you could have made that argument to move to dismiss the state court action for malpractice, now that I'm going back to the other question, before the judgment was issued.

And I confused myself, admittedly, by saying, no, the judgment had to issue. But that's not correct. In fact, you could have raised this argument before judgment was reached in the malpractice action. That the whole case should have been thrown out, is your argument, because they had an obligation to raise the malpractice against Ms. Yitzhak when the federal lawsuit was ongoing as a Federal Rule 13(g) cross claim. It is not mandatory, but still. Okay.

MR. WEINSTEIN: That's why there is a pending lawsuit of Ms. Yitzhak against her former attorney, who failed to, in fact, make that argument.

THE COURT: Okay, fine. But it doesn't change what the bottom line is, and that's sort of an interesting point. I think it means you'll probably lose in the state court maybe for that reason, and she can go off and sue her other lawyer, but I don't think you're going to win in the state court, but more fundamentally, I don't think the state court should be

deciding that issue.

It's a federal law issue, if I am talking about equitable remand. Again, as I said at the outset, I understand what might be the most efficient, if you will, which is simply remand and let the state court judge decide that.

But the issue is, if I have jurisdiction, which I find that I do, the question is should I remand based on an equitable remand or under an equitable remand doctrine, and I don't think so, because I actually think that Federal Rule 13 issue shouldn't -- or doesn't weigh in favor of equitable remand. But the only issue I'm somewhat hung up on is this notion that somehow even the removal itself was in violation of a stay. And that could serve to deprive me of jurisdiction, I think, theoretically.

But I don't know enough about that issue, and no one, obviously, has really -- or no one has addressed it in these two letters. So that requires some briefing, I think.

The other issues, as far as I'm concerned, will not go in your favor, Mr. Weinstein. In other words, if I get past the issue of finding that the removal itself was proper, then, as I said at the outset, the way I predict the other issues will go is I will find I have jurisdiction, I will find that abstention isn't mandatory, and I won't find that equitable remand is warranted. Largely for the reason that I

said, and the other factors. And we can -- we don't need to talk about those at any length. But the majority of those, I think, go against you with respect to equitable remand. There really is no state law issue at play here.

You may have a malpractice lawsuit against her lawyer under the state law case, or state court action, rather, but that doesn't affect my analysis.

Mr. Weinstein?

MR. WEINSTEIN: Thank you, Your Honor.

Just to be clear, it's not that I'm suggesting that the New York state court needs to interpret the federal law, but, rather, what I'm suggesting is that New York courts have already determined, when considering Rule 13, and not necessarily Rule 13 as a federal rule, but the concept of res judicata, that New York state courts have been interpreting that to say claims that could have been brought are now precluded.

So although Rule 13 is cited because that's sort of the providence of the could have and should have been brought, New York state courts are looking at it from a perspective of claims.

So the issue of res judicata is really at the heart of what the motion to vacate is, and it's not necessarily an interpretation of the Federal Court Rule 13.

THE COURT: Mr. Weinstein, res judicata means there

was a ruling. There was no ruling. It wasn't raised. And I think you're only highlighting for me that it would be improper for the state court to apply some general principle about claims that could have been raised, an early point, therefore, lost or waived, when, in fact, they were in federal court. All of the parties were in federal court, and what governed in federal court is -- and still governs, I think, this issue is Federal Rule 13.

The codefendants, but now the plaintiffs, Kahlon and the company, Atlas, didn't have an obligation or were not required to bring their malpractice cross claims against Ms. Yitzhak when they were in federal court. So I don't see -- and then they should be permitted to bring a malpractice lawsuit under federal law.

Now, I'm not sure how a state court judge could then just say, well, they are precluded here in state court because they could have brought this claim -- this malpractice claim earlier, even though they were in federal court at the time.

I mean, they are bringing it when they decided to bring it, which is a valid claim, wasn't barred by federal law. So I don't understand the notion of could have been brought earlier.

Because if she's interpreting Federal Rule 13 correctly, I mean, I guess you could say it could have been brought earlier. I take that back. But it certainly wasn't

required to.

It just troubles me that you want to try to have the state court judge decide an issue that I think depends on a proper interpretation of Federal Rule 13.

That being said, I recognize that your argument may trump whatever Federal Rule 13 does and does not require, if you think there's some over or some superseding or governing principle that preempts any application of federal law, when a party decides to bring malpractice action in state court.

Although it's interesting to me that your own client, Ms. Yitzhak, is bringing a state court malpractice case against -- no, I guess they weren't parties then. She's just bringing -- never mind.

MR. WEINSTEIN: It's in federal court. That malpractice claim is in federal court, Your Honor.

THE COURT: All right.

MR. WEINSTEIN: And just --

THE COURT: Disregard that rumination. I understand what you are saying. I just would be surprised if the state court could decide that because the malpractice claim could have been brought simultaneously, even though the federal rules would not have required it to be brought simultaneously, that somehow they are now barred from arguing malpractice after they lose in that case. But --

MR. WEINSTEIN: I think that the intent --

Your Honor, I'm saying res judicata. I guess I'm not having res judicata and collateral estoppel travel together when I'm saying that. Meaning, the claims that Mr. Kahlon could have brought in federal court should have been brought there and -- Your Honor's shaking your head no.

THE COURT: Well, because the concept of res judicata and collateral estoppel assume some kind of a ruling, either on a claim or an issue, or on the case as a whole. So that's the problem I am having with your analysis. It's more of a waiver issue, if anything, but it is not res judicata, it's not collateral estoppel. That's why I am shaking my head. I think that's a misunderstanding or a misapplication of those terms.

I am not saying you might not be right, I just would be surprised if a state court could come along and say in a federal lawsuit or Federal Rule 13, didn't require the parties on the same side of a case, here defendants and their lawyer, from bringing cross claims based on malpractice, would bar them in a state court action thereafter, or then they decide they want to file for malpractice. It just seems like that must happen.

I shouldn't say that, actually, because, obviously, they are all being sued on one side of it, it's a slightly different situation. But nonetheless, I'd be surprised that somehow the state court wouldn't be convinced that somehow if

they didn't have a requirement of bringing it in the federal case, that now they should be barred from bringing it separately in the state court action.

But I don't make the state law, and I would be surprised if it would be applied in that context and in that way.

MR. WEINSTEIN: Well, that's the thrust of the underlying motion itself, which was provided to the bankruptcy judge. And I go back to the other argument of the appropriate administration of justice. By doing -- we sort of went through this analysis. I'm sorry I'm repeating. By keeping the removal, doing the transfer, and then to the Southern District, and then somehow getting it into bankruptcy court, we are asking the bankruptcy judge to answer a question that has already been answered, which is, stay is lifted so that the state court can render a decision.

And I understand Your Honor's interpretation of Rule 13. The argument at the state court level is being made, that because this claim could have been raised, it is now barred. And there is case law that is in support of that, and that's why the underlying motion was made in state court.

THE COURT: Right. But let me say this. I mean, to the extent that you resuscitate or revise or reiterate some of the cases you relied on in the motion to vacate, those all relate to counterclaims. So, again, the question, you know,

is cross claims. And that's a difference under federal law, and it seems to me it should still be a difference in the state court, where the defense is they are suing us for malpractice, this is a cross claim that should have been brought when the attorney was on the same side of the "V" as the plaintiffs suing for malpractice.

And so I just think your analysis is sort of muddled. But I don't -- like I said, if there's such a case that stands for the proposition you're citing relating to cross claims, because you have only cited to cases relating to counterclaims in your letter, and I think that's a very different analysis, if you are talking about a case that was litigated first in federal court, from which the malpractice lawsuit arises.

At any rate, I guess I'm convinced not for the reasons that you are arguing, although I do want to see more of the case law, I am more convinced that the briefing should go forward, just so I can get more clarification on this notion that somehow the case couldn't or shouldn't have been removed by plaintiffs because of the stay that was in place and how to read 362(a)(1).

So why don't we set a briefing schedule. Obviously brief whatever issues you feel are appropriate with respect to this remand that you're seeking.

I have tried to give you my preliminary view,

although I don't think it is going to change much on the issues about jurisdiction and equitable remand. But you should obviously make whatever arguments you think you need to make, Mr. Weinstein.

How much time do you need to put your motion together?

MR. WEINSTEIN: Is 30 days acceptable to the Court?

THE COURT: Yes, that's fine. 30 days. And then you'll have 30 days to respond, Mr. Haft.

Mr. Haft, could you enter an appearance in this case? Because I know that the original letter was written by Mr. Wang.

MR. HAFT: Yes, Your Honor. I believe I am lead counsel on the docket.

THE COURT: You are. Okay, good.

MR. HAFT: Yes, ma'am.

THE COURT: Okay, good. You'll have 30 days from then, and then two weeks for a reply.

Ordinarily I'd ask you folks to hold off on filing them and wait until the reply is due to file your motion and response, or rather just serve each other in the interim, but here I'd like to resolve this issue sooner rather than later. So go ahead and file, Mr. Weinstein, on the first date, and then file your response, Mr. Haft, on the second. And then the reply will be on the third date.

So, Fida, can you give me 30, 30, and 14.

THE COURTROOM DEPUTY: 30 days from today takes us a little over 30, because it lands on a Saturday, so November 25.

30 days from November 25 takes us --

THE COURT: Let's kick it to the beginning of the new year since we have two holidays in there.

MR. WEINSTEIN: Judge, may I ask -- I'm sorry to interrupt.

Given -- I realize I said 30 days, but that falls just before the Thanksgiving holiday where there's a lot of preparations and travel.

Would it be okay to ask for a little additional time just so I'm not -- you know, I can spend the holiday with my family.

THE COURT: Sure. So --

THE COURTROOM DEPUTY: December 2.

THE COURT: Perfect, Fida. I was going to say, the 28th, I think, is Thanksgiving.

THE COURTROOM DEPUTY: December 2 --

THE COURT: December 2, sorry, Fida, for the opening motion. And then --

THE COURTROOM DEPUTY: January 6.

THE COURT: -- January 6. And January 20 for the reply.

Sorry, Fida, if I spoke over you.

THE COURTROOM DEPUTY: That's okay, Judge.

THE COURT: All right. So we'll set that forth in the minute entry, but just instead of what we call bundling here, just serve each other and file -- or rather, file, and then that will operate as service on each other. Okay?

MR. WEINSTEIN: Yes, Your Honor. Thank you.

MR. HAFT: Thank you.

THE COURT: Thank you.

Mr. Haft, I didn't give you a chance to respond in any other way. Did you want to?

MR. HAFT: No, Your Honor.

THE COURT: Okay. Thanks, everyone. I appreciate it.

MR. WEINSTEIN: Thank you, Your Honor.

MR. HAFT: Thank you, Your Honor.

(Proceedings concluded at 3:54 p.m.)

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REPORTER'S CERTIFICATE

I, ANNETTE M. MONTALVO, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings.

Dated this 4th day of November, 2024.

/s/Annette M. Montalvo
Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter